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**U.S. District Court
DISTRICT OF ARIZONA (Phoenix Division)
CIVIL DOCKET FOR CASE #: 2:08-cv-00672-HRH
Internal Use Only**

Esmart Group Pty Limited, et al v. Grout
Assigned to: Judge H Russel Holland
Cause: 35:145 Patent Infringement

Date Filed: 04/07/2008
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

Esmart Group Pty Limited represented by **Kimberly Anne**

Pat. # 7,287,979

Warshawsky

Greenberg Traurig LLP
2375 E Camelback Rd
Ste 700

Phoenix, AZ 85016

602-445-8566

Fax: 602-445-8100

Email:

warshawskyk@gtlaw.com

LEAD ATTORNEY

ATTORNEY TO BE

NOTICED

John Alan Doran

Greenberg Traurig LLP
2375 E Camelback Rd
Ste 700

Phoenix, AZ 85016

602-445-8507

Fax: 602-445-8688

Email: doranj@gtlaw.com

*ATTORNEY TO BE
NOTICED*

Laura Elizabeth Sixkiller
Greenberg Traurig LLP
2375 E Camelback Rd
Ste 700
Phoenix, AZ 85016
602-445-8000
Email: sixkillerl@gtlaw.com
*ATTORNEY TO BE
NOTICED*

Plaintiff

**The Fire Company Pty
Limited**

represented by **Kimberly Anne
Warshawsky**
(See above for address)
*LEAD ATTORNEY
ATTORNEY TO BE
NOTICED*

John Alan Doran
(See above for address)
*ATTORNEY TO BE
NOTICED*

Laura Elizabeth Sixkiller
(See above for address)
*ATTORNEY TO BE
NOTICED*

V.

Defendant

Mike Grout

| | | |
|-------------|--|--|
| Date | | |
|-------------|--|--|

| Filed | # | Docket Text |
|--------------|----------|---|
| 04/07/2008 | <u>1</u> | COMPLAINT. Filing fee received: \$ 350.00, receipt number 09700000000001852332, filed by Esmart Group Pty Limited. (Attachments: # <u>1</u> Exhibit A, # <u>2</u> Civil Cover Sheet)(Warshawsky, Kimberly) (Entered: 04/07/2008) |
| 04/07/2008 | <u>2</u> | Notice re Summons by Esmart Group Pty Limited re <u>1</u> Complaint (Warshawsky, Kimberly) (Entered: 04/07/2008) |
| 04/07/2008 | | This case has been assigned to the Honorable H. Russel Holland. All future pleadings or documents should bear the correct case number: CV 08-672-PHX-HRH. (Entered by REK) (Entered: 04/08/2008) |
| 04/07/2008 | <u>3</u> | Notice re Magistrate Consent Form (REK) (Entered: 04/08/2008) |
| 04/07/2008 | <u>4</u> | Notice re Corporate Disclosure Statement re <u>1</u> Complaint (REK) (Entered: 04/08/2008) |
| 04/08/2008 | <u>5</u> | Summons Issued as to Mike Grout. (REK). *** IMPORTANT: You must select "Document and stamps" or "Document and comments" on the print screen in order for the court seal to appear on the summons you print. (Entered: 04/08/2008) |

1 **GREENBERG TRAURIG, LLP**

2 ATTORNEYS AT LAW

3 SUITE 700

4 2375 EAST CAMELBACK ROAD

5 PHOENIX, ARIZONA 85016

6 (602) 445-8000

7 John Alan Doran, SBN 012112, DoranJ@gtlaw.com
8 Kimberly A. Warshawsky, SBN 022083, WarshawskyK@gtlaw.com
9 Laura Sixkiller, SBN 022014, SixkillerL@gtlaw.com
10 Attorneys for Plaintiffs

11 IN THE UNITED STATES DISTRICT COURT

12 DISTRICT OF ARIZONA

13 ESMART GROUP PTY LIMITED and THE
14 FIRE COMPANY PTY LIMITED,

15 Plaintiffs,

16 v.

17 MIKE GROUT,

18 Defendant.

No.

COMPLAINT

(Patent Infringement)

(Jury Trial Demanded)

19 Plaintiffs Esmart Group Pty Limited and The Fire Company Pty Limited, by and
20 through their attorneys, for their Complaint against Defendant Mike Grout, on information
21 and belief, allege as follows:

22 **THE PARTIES**

23 1. Plaintiff Esmart Group Pty Limited ("ESMART") is a company existing
24 under the laws of the country of Australia, with its principal place of business at 9/5 Vuko
25 Place, Warriewood NSW 2102, Australia.

26 2. Plaintiff The Fire Company Pty Limited ("FIRE COMPANY") is a
company existing under the laws of the country of Australia, with its principal place of
business at 9/5 Vuko Place, Warriewood NSW 2102, Australia.

3. Upon information and belief, Defendant Mike Grout is a citizen of Arizona
and resides at 4632 North 40th Street, Phoenix, Arizona 85018.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. §§ 1, *et seq.*

5. This Court has subject matter jurisdiction over this action pursuant to the laws of the United States governing actions related to patents, 28 U.S.C. §§ 1331 and 1338(a).

6. Defendant conducts business in this district. This Court therefore has general personal jurisdiction over Defendant.

7. Defendant has committed acts of patent infringement in this district.

8. Upon information and belief, Defendant continues to commit acts of patent infringement in this district.

9. This Court also has specific personal jurisdiction over Defendant.

10. Venue in this judicial district is proper under 28 U.S.C. §§ 1391 (b), (c) and (d) and 1400(b) because Defendant resides in this judicial district, has committed acts of patent infringement in this district, and has conducted business in this district.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

11. Plaintiffs are engaged in, among other things, the development, manufacture, and sale of alternative fuel fireplaces that do not require flues. Homeowners, housing developers, and restaurants are common purchasers of these products.

12. On October 30, 2007, U.S. Patent No. 7,287,979 ("the '979 Patent") was duly and legally issued by the United States Patent and Trademark Office. The '979 Patent was assigned to Plaintiff ESMART, who is the owner of all right, title, and interest in and to the '979 Patent, including the right to sue for infringement and recover damages

1 resulting therefrom. Plaintiff FIRE COMPANY is the operating company for Plaintiff
2 ESMART.

3 13. A copy of the '979 Patent is attached hereto as Exhibit A and is made a part
4 of this Complaint.

5 14. Plaintiffs are and have been selling, within this judicial district, products in
6 accordance with the '979 Patent.

7 15. Upon information and belief, Defendant is and has been selling products
8 embodying the invention claimed in the '979 Patent within the United States of America,
9 including within this judicial district.

10 16. At all relevant times, Defendant has been and continues to be the sole
11 member and owner of the Arizona limited liability company, Innovations M2, LLC
12 ("INNOVATIONS"), having a principal place of business at 4632 North 40th Street,
13 Phoenix, Arizona, 85018.

14 17. As the sole member of INNOVATIONS, Defendant has operated
15 INNOVATIONS out of his personal residence and exercised total control over all of
16 INNOVATIONS' activities.

17 **COUNT I**

18 **Infringement of United States Patent No. 7,287,979**
19 **(35 U.S.C. §§ 1, *et seq.*)**

20 18. Plaintiffs re-allege and incorporate by reference each of the allegations of
21 Paragraphs 1 through 17 as if fully set forth herein.

22 19. At all relevant times, INNOVATIONS functioned as Defendant's alter ego
23 as Defendant completely dominated and exercised total control over INNOVATIONS'
24 policies and business practices.

25 20. Among the policies and business practices implemented by Defendant were
26 INNOVATIONS' infringement of the '979 Patent.

1 21. The extent of Defendant's control over INNOVATIONS renders
2 INNOVATIONS' separate corporate existence from Defendant a mere fiction.

3 22. Observance of this corporate fiction would effectively sanction Defendant's
4 and INNOVATIONS' willful conduct and unjustly allow Defendant and INNOVATIONS
5 to retain the benefits of their infringing action to the detriment of Plaintiffs.

6 23. Because Defendant is the alter ego of INNOVATIONS, he may be held
7 directly, jointly and severally liable for INNOVATIONS' infringement of the '979 Patent.

8 24. Accordingly, INNOVATIONS' liability shield should be pierced and
9 Defendant held directly, jointly and severally liable for INNOVATIONS' infringement of
10 the '979 Patent.

11 25. Upon information and belief, all of Defendant's acts were and are
12 intentional and willful.

13 26. Defendant's acts have damaged Plaintiffs and, unless enjoined, will
14 continue to damage and cause irreparable injury to Plaintiffs.

15 27. Plaintiffs have no adequate remedy at law.

16 **RELIEF REQUESTED**

17 WHEREFORE, Plaintiffs respectfully request judgment against Defendant as
18 follows:

19 A. A Judgment that Defendant is directly and personally liable for
20 INNOVATIONS' infringing of one or more of the claims of the '979 Patent in violation
21 of 35 U.S.C. § 271(a);

22 B. A temporary, preliminary and permanent injunction enjoining Defendant,
23 his agents, employees, licensees, and all those in privity with him, including
24 INNOVATIONS, from infringing the '979 Patent;

25 C. An award of damages against Defendant sufficient to compensate Plaintiffs
26 for the injury caused by INNOVATIONS' infringement of the '979 Patent;

1 D. An award trebling the damages pursuant to 35 U.S.C. § 284 based upon
2 INNOVATIONS' willful infringement of the '979 Patent;

3 E. An assessment of costs, including reasonable attorneys fees pursuant to 35
4 U.S.C. § 285, and prejudgment interest against Defendant; and

5 F. Such other and further relief as this Court may deem just and proper.

6 RESPECTFULLY SUBMITTED this 7th day of April, 2008.

7 GREENBERG TRAURIG, LLP

8 By: /s/ Kimberly A. Warshawsky

9 John Alan Doran

10 Kimberly A. Warshawsky

11 Laura Sixkiller

12 Attorneys for Plaintiffs

13 Of counsel:

14 Angelo J. Bufalino, Esq.

15 Michael J. Turgeon, Esq.

16 Robert S. Rigg, Esq.

17 Vedder Price P.C.

18 222 N. LaSalle St., Suite 2600

19 Chicago, Illinois 60601-1003

20 (312) 609-7500 – Tel

21 (312) 609-5005 – Fax